THE DIRECTOR OF CENTRAL INTELLIGENCE

WASHINGTON, D.C. 20505

NIC #2199-83
21 March 1983

National Intelligence Council

MEMORANDUM FOR: Director of Central Intelligence
Deputy Director of Central Intelligence

THROUGH: Acting Chairman, National Intelligence Council

FROM: Maurice C. Ernst, NIO/Economics

SUBJECT: NSC Meeting on Renewal of the Export Administration Act

1. The purpose of the 2~~1~~3 March NSC meeting is to decide on three main issues concerning revision of the Export Administration Act before the Administration's draft of the Act is presented to Congress. These issues are: sanctity of contracts; new authority for imposing US import controls on foreign nations which do not abide by US foreign security export controls; and new authority for import controls on companies which are in violation of either national security controls alone or national security, foreign policy, and short supply controls. These issues are the only ones on which an interagency consensus could not be achieved from a much larger number which were identified when the policy review process was initiated. The three issues are summarized in Attachment A. An earlier options paper which covered all the initial issues is Attachment B.

2. The process of developing the Administration's position on renewal of the Export Administration Act has involved the balancing of the following considerations:

- A desire to minimize the damage export controls do to the competitive position of US business.
- A desire to minimize damage to our relations with our Allies.
- A concern for protection of Presidential and Executive Branch powers.

3. There have been strong pressures on the Administration from business groups and demarches from foreign governments and the European Community to ease export controls, although in different ways. Several bills to revise the Act, mostly reflecting US business interests, are pending in Congress. Although there has been at least a near consensus within the Administration that it is possible to live with the present Act,

some have suggested that attempts to strengthen Executive authority might be tactically useful in order to counteract the predominant pressures to weaken it.

Issue One

4. The "contract sanctity" issue has been hotly debated in the SIG-IEP and other groups. US business feels strongly that the power to override existing contracts is a serious problem and that there is no reson to treat industrial goods differently from agricultural products. The contrary view, which is held by both State and Defense, holds that excluding existing contracts from export controls would excessively limit Presidential authority and flexibility. Secretary Shultz, although favoring retention of existing Presidential authority, believes that the Administration should make clear that it will use its powers only for very serious reasons.

Issue Two

5. Commerce and Defense, as well as substantial business groups, favor new authority to impose import controls on foreign countries which were violating foreign policy export controls because it would strengthen the President's hand and result in more equitable burden sharing among the members of the Alliance. State and most other agencies are against it because of the potential damage to our relations with our Allies and the likely inconsistency with agreements under GATT.

Issue Three

6. Authority to impose import controls as a penalty against countries that violate COCOM or US export controls--with options to apply this provision only to national security controls, or also to foreign policy and short supply controls.

The arguments are similar to those under Issue Two.

7. Comment: There is little doubt that the addition of import control authority on either national security or foreign policy grounds would be very badly received by our Allies and would give public prominence to contentious issues, such as extraterritoriality, at a time when we are trying to build an Alliance consensus on East-West economic relations, INF, and other key Alliance questions. Indeed, there is a possibility that raising such issues would result in less cooperation from the Alliance, for example on COCOM, than would otherwise be the case.

8. What would create the problem is probably not so much the added authority the President would gain as the implication that the US is insisting on the principle of extraterritoriality in the face of the strong European reaction during the pipeline sanctions. The Allies almost

certainly would consider such an initiative to cast serious doubt as to the willingness of the US to approach East-West economic relations on a cooperative basis.

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Maurice C. Ernst for

Attachments:
As stated

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March 21, 1983

MEMORANDUM FOR

Mr. Donald P. Gregg
Assistant to the Vice President
for National Security Affairs

Mr. L. Paul Bremer, III
Executive Secretary
Department of State

Mr. David Pickford
Executive Secretary
Department of the Treasury

Lt. Col. W. Richard Higgins
Assistant for Interagency Matters
Office of the Secretary of Defense

Mr. Roger Clegg
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Department of Justice

Mr. Raymond Lett
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Department of Agriculture

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Department of Commerce

Dr. Alton Keel
Associate Director for National Security and International Affairs
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Executive Secretary
Central Intelligence Agency

Ms. Jackie Tillman
Executive Assistant to the United States Representative to the United Nations
Department of State

Mr. Dennis Whitfield
Executive Assistant to the United States Trade Representative

Assistant to the President for Policy Development

Mr. Eric Hemel
Special Assistant to the Chairman, Council of Economic Advisors

Col. George A. Joulwan
Executive Assistant to the Chairman
Joint Chiefs of Staff
The Pentagon

SUBJECT: National Security Council Meeting on Export Administration Act (C)

Attached are background papers for the National Security Council Meeting on the Export Administration Act scheduled for Tuesday, March 22, at 11:00 in the Cabinet Room. (C)

Michael O. Wheeler

Michael O. Wheeler
Staff Secretary

Attachments

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EXPORT ADMINISTRATION ACT

OPTIONS PAPER

Issue 1: Should the Administration bill include a "contract sanctity" provision that excludes pre-existing contracts from foreign policy export controls? (This prohibition would apply for 270 days, except where the President determines that the absence of foreign policy controls on these exports would prove detrimental to the overrriding national interests of the United States).

Analysis:

Currently, the President may invoke export controls that affect pre-existing contracts at any time on all but agricultural commodities. Under a recently enacted law, pre-existing contracts for agricultural commodities are excluded from export controls for a period of 270 days except in the case of a declared national emergency or state of war.

Senator Heinz and Congressman Bonker have both introduced bills containing contract sanctity provisions. These proposals are strongly supported by the business community.

Pro: The imposition of export controls on pre-existing contracts makes U.S. exporters unreliable suppliers and forces them to incur unexpected economic losses. Equity would require that non-agricultural commodities receive the same protection as agricultural commodities.

Con: The President needs maximum flexibility to conduct U.S. foreign policy short of military actions. In addition, by proposing this limitation, the President might be seen as acknowledging error with regard to the Soviet pipeline sanctions.

Agencies supporting: Agriculture, Commerce, OPD-WH, Treasury, USTR, CEA.

X

Agencies opposed: Defense, Justice, State, OMB

Decision:

Approve ________ Disapprove ________

Issue 2: Should the Administration bill give the President new discretionary authority to impose import controls on a country whenever foreign policy export controls are imposed on that country?

Analysis:

Currently there are no provisions authorizing the President to impose import controls whenever export controls are imposed.

Senator Heinz has introduced a bill containing an import control provision. This proposal is supported by some members of the business community, although there is not a business consensus.

Pro: If U.S. exporters are required to incur economic loss, the businesses in the affected countries should also share the economic burden of U.S. foreign policy controls. The proposal gives the President an additional tool for implementing U.S. foreign policy.

Con: Political pressure may be brought to bear upon the President to impose import controls or take stronger measures than would otherwise be the case. Retaliation and other foreign relations problems would likely ensue from adoption of this proposal. Import restrictions imposed against GATT members solely for foreign policy reasons would be in violation of GATT obligations.

Agencies supporting: Commerce, Defense

Agencies opposed: Agriculture, CEA, State, Treasury, USTR, Justice

Decision:

Approve _______ Disapprove _______

Issue 3: Should the Administration bill give the President new discretionary authority to impose import controls as a penalty against companies that violate COCOM or U.S. export controls? If so, should this authority extend to:

A. Only national security controls?
B. National security, foreign policy and short supply controls?

Analysis:

Currently the President does not have this authority. Moreover, COCOM is a purely voluntary organization. None of its members has authority to penalize violations of COCOM provisions by companies of another COCOM member.

Senator Heinz has introduced a bill containing a similar provision. This proposal is strongly supported by the business community.

Pro: Current enforcement provisions are not working well. The authority to impose such sanctions would make multilateral controls through COCOM and enforcement of our export control laws more effective. This proposal would provide a powerful incentive for companies to abide by COCOM provisions and U.S. export laws.

Con: This proposal would jeopardize continued participation in COCOM by certain member states. Any provision for sanctions should result from agreement among the COCOM members rather than by unilateral U.S. statutory mandate, the extraterritorial reach of which will be challenged. As in Issue 2, retaliation and foreign relations problems would likely ensue. Restrictions against GATT members solely imposed for foreign policy reasons would be in violation of the GATT obligations of the United States.

Agencies supporting: A. National security only: CEA, Treasury, USTR, Justice
B. All controls: Commerce, Defense

Agencies opposed: Agriculture, OMB, State

Decision:

Approve ______

A. For national security controls only ______
B. For all controls ______

Disapprove __________

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At NSC's req hypothetical examples of the application of import controls merely to assist interested agencies.

ILLUSTRATIVE EXAMPLES OF IMPORT CONTROLS

Issue 2: Should the Administration bill give the President new discretionary authority to impose import controls on a country whenever foreign policy export controls are imposed on that country?

Example: The United States has imposed foreign policy export controls on Libya. The proposal would allow the President, at his discretion, to prevent the importation of some or all products from Libya to the U.S.

Issue 3: Should the Administration bill give the President new discretionary authority to impose import controls as a penalty against companies that violate COCOM or U.S. export controls? If so, should this authority extend to:

A. Only national security controls?
B. National security, foreign policy and short supply controls?

Examples of A:

1. A foreign subsidiary of a U.S. company (X), in disregard of COCOM agreements and a U.S. national security control, sells a sophisticated U.S. computer to the Soviet Union without a license.

2. A purely French company (Y), in disregard of a COCOM agreement, sells a sophisticated, purely French computer to the Soviet Union.

This proposal would allow the United States to penalize both X and Y by preventing the importation into the United States of any or all products of X and Y for a given time period.

Comment: These two factual situations illustrate opposite extremes in the possible implementation of this provision. The factual situation with Y is the most extreme example. In the absence of this provision, Y's transfer would not be a violation of U.S. law because a foreign company shipping a foreign computer would not otherwise be subject to the jurisdictional reach of U.S. law.

Examples of B:

1. The examples in "A" are also applicable here.

2. The United States imposed foreign policy controls in the form of the Pipeline Sanctions against the Soviet Union. This provision would have allowed the President to prevent the importation into the United States of products from companies that shipped goods to the Soviet Union in disregard of our sanctions.